

Overview of Trust Lands in Alaska

1. Tribal Governments and Trust Land

- Tribal governments are separate sovereign governments. The federal government annually publishes a list of federally recognized tribes. Dep't of Interior, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 81 Fed. Reg. 26,826 (May 4, 2016), *available at* <http://www.indianaffairs.gov/cs/groups/xraca/documents/text/idc1-033010.pdf>.
- A tribe's government authority is tied to its tribal members and tribal land. "Indian country" status is generally needed for land-based tribal government authority.
- Lands held by tribes in fee title is not "Indian country." *See Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 532 (1998).
- A tribe or individual Native American can now acquire land and ask the federal government to hold it in trust for the benefit of that tribe or individual Native American. 25 U.S.C. § 5108; 25 C.F.R. § 151.3. A regulation had prohibited the federal government from taking land in trust in Alaska until December 2014, when the federal government revised the regulation. Dep't of Interior, Land Acquisitions in the State of Alaska, 79 Fed. Reg. 76,888 (Dec. 23, 2014).
- Federal law provides that if land is placed in trust, it will become "Indian country" so that "an Alaska tribe possessing trust lands would be able to exercise jurisdiction over such land consistent with the manner in which Indian tribes exercise authority over trust lands located in the rest of the country." Dep't of Interior, Land Acquisitions in the State of Alaska, 79 Fed. Reg. 76,888, 76,893 (Dec. 23, 2014).

2. The Scope of Tribal and State Governmental Authority within Trust Lands

- The extent of tribal government authority and the extent of state government authority within trust lands is very complicated and depends on the subject matter. Generally, state authority is reduced and tribal authority is increased. Depending on the subject matter the tribal authority and the state authority may overlap so that there is concurrent jurisdiction. In other circumstances, either the tribe or the State might have exclusive jurisdiction.
- As a general matter, when lands are put into trust, tribes acquire civil regulatory and concurrent criminal jurisdiction. Tribal government conduct is governed by the Indian Civil Rights Act, which provides a limited bill of rights. Tribes can only enforce criminal laws against Alaska Natives and Native Americans. And in some circumstances tribal civil authority over nonmembers can also be limited.

- Under a federal law known as Public Law 280, the State will have continuing criminal jurisdiction within trust lands, as well as authority to enforce civil laws that are “prohibitory.” State troopers will continue to have authority to arrest for state law crimes on the trust land.
- Public Law 280 does not give the State authority to enforce purely “regulatory” laws. The extent of the State’s civil regulatory authority on trust land is very subject-matter specific, and the line between civil “prohibitory” and purely “regulatory” laws is not always clear.

3. Why Discussion with and Input from Agencies is Needed

- The State has an opportunity to comment to the federal Bureau of Indian Affairs on the jurisdictional and tax implications of specific trust acquisitions. The State may object to a particular trust application or raise concerns it wants addressed. The Attorney General’s Office can help the various State agencies and departments evaluate and comment if you alert us to the state government activities that occur on a given trust parcel or how the property is currently regulated.

For example, are there State-issued permits or licenses associated with the parcel or tribe? What state regulations are currently implicated by the parcel?

Once the scope of current state government activities and regulations on the parcel are clear, those can be analyzed to determine if the State will lose that specific authority if that land is placed in federal trust.